BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rate for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS OF THE
USTELECOM ASSOCIATION

Pursuant to the Further Notice of Proposed Rulemaking (FNPRM) adopted in conjunction with the Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration (Order) in the above-referenced proceeding (collectively, *2018 Rate-of-Return Budget Order and FNPRM),*[1] USTelecom – The Broadband Association[2] respectfully submits these comments responding to the Commission's request for comment on further reforms to the rate-of-return high cost program that will establish rules to auction support in areas with 100 percent or near 100 percent overlap and modification to the rules allowing for conversion of customer lines to broadband-only for purposes of Universal Service Fund (USF) support.[3]

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[1] *See In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rate for Local Exchange Carriers, Developing a Unified Intercarrier Compensation Regime*, WC Docket Nos. 10-90, 14-58 07-135 and CC Docket No. 01-92, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18-176 (Dec. 12, 2018) (*Rate-of-Return Budget Order and FNPRM*).

[2]USTelecom is the nation's leading trade association representing service providers and suppliers for the broadband innovation industry. Its diverse member base ranges from large publicly traded communications corporations to small companies and cooperatives – all providing advanced communications and broadband services to hundreds of millions of customers around the world.

[3] *See Rate-of-Return Budget Order and FNPRM* at 3, para 3.

I. AUCTION FOR OVERLAPPED AREAS

In the *2018 Rate-of-Return Budget Order and FNPRM* the Commission took additional steps to stimulate broadband deployment in rural areas in order to close the digital divide by, among other things, improving the budget and for all small rural carriers. The Commission also determined that areas with 100 percent or near 100 percent overlap should be subject to auction and asked for comment on how to implement such an auction.[4] More specifically, the Commission said that the they believe the use of an auction is a more efficient way to award support in areas that are overlapped or almost entirely overlapped by unsubsidized competition and seeks comment on how this decision should be implemented, including the elements of auction design.[5] This finding that 100% or nearly 100% overlapped areas should be auctioned begs the question – what defines nearly 100% overlapped? And indeed, the Commission seeks comment on what percentage we should use to determine those study areas that are almost entirely overlapped according to FCC Form 477.[6] The Commission notes that currently, there are eight legacy study areas with 100% overlap and seven legacy study areas with at least 95% overlap with approximately $12 million in unconstrained projected claims for all 15 study areas for 2018.[7] USTelecom supports only considering an auction if 99%+ of locations in study area must be competitively served. Dropping below this is unnecessary and the FCC should use extreme caution in removing support from carriers that have made prior investments with the expectation of support. If the Commission sets the precedent of support removal, it will have a chilling effect on companies contemplating investments today. Providers plan for the long-term when making their investments in broadband and if the carriers are concerned that in 3-5 years

[4] *See Rate-of-Return Budget Order and FNPRM* at 43, para 143.
[5] *See Id.* at 53, para184.
[6] *See Id.* at 53, para 185.
[7] *See Id.*

support will be removed based on what a competitor says they cover, companies will not include future support in their economic analysis because the risk will be too high and ultimately this will reduce the value of USF dollars in spurring broadband investment.

Additionally, it does not make sense to implement a reverse auction in a situation where an incumbent has already deployed a network and competitor may or may not have deployed a network that also may or may not be as robust as what the incumbent already has in place. It is important to remember that the Commission has already issued an order on how it will deal with competitive overlap in its *2016 USF Order*.[8] The Commission should continue with the process previously defined and apply it to the 99%+ overlapped areas at the new 25/3 speed requirements, rather than start a new and questionable process. In prior comments in this proceeding, we have noted that this overlap calculation is essential to the rural broadband providers providing service because they need to be able to predict where they will receive support and be sure that that support will not disappear at some undetermined time.[9]

If a company makes an investment with the anticipation of support, the Commission should not eliminate it unless and until the company has recovered that investment. Many carriers in rural America have taken out loans and made investments to serve their communities. In most cases major loans were made by RUS and others with a 20-22 year payback. Although interest rates continue to be low, support in these areas continues to decrease. Meanwhile the carriers serving these areas have continued to work to upgrade equipment and build out fiber network in small towns across America because consumers want fiber to keep up with urban areas and to give children in rural areas the chance to succeed on a similar playing field.

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[8] *See Connect America Fund, ETC Annual Reports and Certifications, Developing a Unified Intercarrier Compensation Regime*, WC Docket No. 10-90, et al., Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (*2016 Rate-of-Return Reform Order*).

[9] Comments of USTelecom, WC Docket Nos. 10-90, 14-58 07-135 and CC Docket No. 01-92 at 11-12 (May 25, 2018).

Meeting the needs of rural consumers increases adoption, which in turn enables carriers to pay back their loans. Therefore, removing support and/or turning that same support over to a competitor makes no sense.

However, if the Commission does take this route, there should be a transition period where the new provider is building a new network. Setting a transition for the remaining life of the assets in service is a reasonable way to accomplish this goal and will minimize a potential chill of investment. Dual support should be provided until the new entrant has 100% coverage and the transition should provide recovery of prior investments made with the expectation of recovery under current systems over the remaining life of those investments. Some portion of operating expenses associated with maintaining those investments should also be included and the competitor's liability in the event of failure to meet its deployment obligations should be the full amount of existing support less any transition payments.

If a new entrant seeks to damage the incumbent and does so by winning an auction with a zero or extremely low bid, its goal is not the USF funding, but instead the elimination of a competitor. In these instances, the new entrant will then be able to charge higher prices to the economically feasible customers and still not provide service in areas where it is uneconomical without universal service support. This result would be devastating not only to the incumbent's business but more importantly to the consumer who still won't get broadband service, therefore the Commission should put in place adequate safeguards so that consumers do not lose service. In that vein, it should be noted that the incumbent carriers in these areas in addition to receiving USF support often have a carrier of last resort (COLR) obligation in these areas. If so, USTelecom supports that obligation being removed from the incumbent and/or passed on to the auction winner.

In any event, there absolutely has to be a challenge process. While it is clear the Commission sees the simplest path as reliance on the FCC Form 477 data, the Commission does ask the question whether rather than solely rely on FCC Form 477 data, the Commission should also conduct a challenge process to verify the accuracy of that data in the affected study areas.[10] USTelecom submits that there is clear and significant evidence already in the record that the 477 data is obviously flawed. Indeed, USTelecom has been a strong advocate for our proposed path to achieve better data via FCC Form 477. In the Commission's own FCC Form 477 Modernization proceeding the Commission acknowledges that the current method of reporting wherein a single location served in a census block, translates to the census block being considered all served is not nearly granular enough.[11] This has been supported by Commissioner O'Reilly who noted in the context of an FCC Order related to tribal operating expense relief that, "this order highlights *the problem of relying on Form 477 data for purposes of providing USF subsidies—a use for which the data was never originally intended*. While the flaws of such reliance are well-known, the Commission has inconsistently chosen to either rely on the data, as in the second ACAM offer, or reject it, as in the case at hand…The Commission's Form 477 Data problem is very real…."[12] Even more recently, the Administration raised this concern in its American Broadband Initiative Milestones report, "many Federal and State grant and loan programs base program eligibility on the FCC Form 477 data…. While this is a valuable dataset, more comprehensive and granular data would provide an improved foundation upon which to base program decisions. . . . With limited funding available, getting better data to target investments to

[10] *See Rate-of-Return Budget Order and FNPRM* at 53, para 185.
[11] *See In the Matter of the Modernizing the FCC Form 477 Data Program*, Further Notice of Proposed Rulemaking 32 FCC Rcd 6329, 6342 (Aug. 3, 2017).
[12] *See Statement of Commissioner O'Rielly, In the Matter of the Connect America Fund*, Order on Reconsideration, CC Docket No. 01-90, FCC 18-187 (Dec. 31, 2018).

under and unserved areas remains a high priority across Federal and State Agencies.[13] USTelecom has strongly advocated for its proposed solution to this problem which involves creating a database of all broadband serviceable locations in the United States and then ask carriers to identify which of those locations they serve, which will enable the Commission to more accurately identify which areas are served and which are not, as well as obtain accurate information about overlap.[14] USTelecom believes the creation of such a database is the important first step of determining the geolocation of all underlying reported service locations so as to be able to tell not only where there is service but what other locations there are in that census block that are not receiving service.

Additionally, a challenge process will show whether or not the competitor is actually providing service on a common carrier basis or picking and choosing their customers. Often competitors will choose not to provide service to small businesses right off in incumbent's fiber because it is not profitable. A competitor should not be allowed to claim that it could provide service and eliminate a competitors' support if it does not intend to provide service on rates and terms comparable to the incumbent.

Moreover, in the *2018 Rate-of-Return Budget NPRM* the Commission sought comment on how the Commission should take into account the reforms it has adopted in the *2016 Rate-of-Return Reform Order* as well as proposals in that Notice—reforms and proposals that will bring more predictability to rate-of-return carrier support, while spurring deployment and mitigating regulatory inefficiencies.[15] We maintain as we did in our earlier comments that one of the ways the Commission could continue to implement the changes it made in the *2016 Rate-of-Return Reform Order* and improve the predictability all broadband providers need would be to complete

[13] *See American Broadband Initiative Milestones Report*, February 2019 https://www.ntia.doc.gov/files/ntia/publications/american_broadband_initiative_milestones_report.pdf.
[14] *See* Letter of B. Lynn Follansbee, VP–Law & Policy, USTelecom to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-10, (Oct. 17, 2018).
[15] *See Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29, at 45, para 111 (rel. Mar. 23, 2018) (2018 Rate-of-Return Reform Order and NPRM).

the competitive overlap proceeding it designed in the *2016 Rate-of-Return Reform Order*. Predictability is at the heart of the issue here as well. Carrier serving these areas made investments and took out loans in anticipation of continued support. Removal of that support based on questionable FCC Form 477 data without a challenge process or without an adequate transition is counterintuitive to such a notion of predictability.

Looking forward, USTelecom supports the Commission instituting the challenge process already adopted in the rules on a limited set of companies such as those who are predominantly served by an unsubsidized competitor as reported on FCC Form 477. This would be a more manageable subset of companies and the Commission will not have to deal with all the new issues involved with a reverse auction where an incumbent has already deployed a robust broadband network.

II. CONVERSION OF BROADBAND ONLY LINES

In the *2018 Rate-of-Return Budget Order and FNPRM*, the Commission also expressed concern that as carriers move from offering voice and voice/broadband lines to broadband-only lines, the amount of support required from USF will increase.[16] While USTelecom is grateful to the Commission for adopting a minimum of a 7% budgetary increase in 2019, we disagree with the Commission's statement that they anticipate that this 7% increase should exceed any increases to the budget due to conversions of lines from voice or voice/broadband to broadband-only[17] and we appreciate the opportunity to comment on whether the Commission should adopt limits on the number of converted lines for which a carrier may seek broadband-only support.

USTelecom and other industry stakeholders have a formed a proposal that limits conversion to stand alone broadband in order to ensure that the budget is not exceeded in a short

[16] *See Rate-of-Return Budget Order and FNPRM* at 55 para 200.
[17] *Id.*

period of time. Given the organic rate of conversion currently, industry is certain if it were allowed to grow unconstrained carriers would be facing a budget crisis akin to the one the Commission just fixed in its December 2018 Order. The proposal locks in CBOL conversions done prior to December 31, 2018 and allows each company to recover based on a CBOL count no higher than the 12/31/18 plus 10% of total voice and broadband lines annually. CBOL lines in excess of the limit would be treated as voice/data for USF purposes. In addition, if the industry as a whole, including those companies that exceeded the 10% cap, produced a CAF-BLS demand that did not create (or increase) the BCM, those companies could get funding for the lines that exceeded 10%. This limit should be imposed on a statewide basis.

That said, the Commission must continue to strive to meet the increased needs of the fund that is bound to happen over time. For example, a loop can move from voice/data to data only, and back and forth depending upon the customer's choice of service. This is something that is not within a carrier's control and consumer choice should not serve as a penalty to the carrier. The Commission rightly noted in the *2016 Rate-of-Return Reform Order* and in the current item that predictability is highly desirable for investment purposes.[18] With the adoption of the *2018 RoR Report and Order* broadband providers gained some added ability to predict their level of support as well as assess the current demand on the fund. This proposal helps in guaranteeing that the budget will not be exceeded for some time to come, giving carriers added predictability. Adopting this proposal will both ensure that the budget meets the needs of programs and that the digital divide is not exacerbated in the way that Chairman Pai himself expressed concern about in 2018.[19]

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[18] *See 2016 Rate-of-Return Reform Order* at 3097.

[19] *See* Statement of Chairman Ajit Pai on Projected USF Budget Cuts for Small, Rural Carriers, News Release, FCC, May 1, 2018.

USTelecom applauds the Commission for seeking ways to streamline and encourage additional efficiencies in the elements of the USF program raised in this NPRM. However, we also urge the Commission to act in a considered fashion noting that changes to how the budget is implemented should be consistent with the Commission's policy goals, and done prudently so that they continue to provide certainty, stability, and predictable support as part of the overall reform framework and would help carriers meet the Commission's goals for improvement and extension of broadband facilities and service.

Respectfully submitted,

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